

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

DUC MINH TRAN,

Plaintiff,

v.

**THE COUNTY OF DOUGLAS, DOUGLAS
COUNTY BOARD OF COMMISSIONERS,
LAWRENCE POLICE DEPARTMENT,
THE CITY OF LAWRENCE, LAWRENCE
BOARD OF CITY COMMISSIONERS, BRAD
WILLIAMS, GREGORY C. BURNS, AMY A.
McGOWAN and LeTIFFANY OBOZELE,**

Defendants.

CIVIL ACTION

No. 21-2310-KHV

MEMORANDUM AND ORDER

On November 24, 2021, the Court ordered plaintiff to show good cause in writing why service of the summons and complaint was not made upon Brad Williams, Gregory C. Burns and Amy A. McGowan within 90 days from the filing of the complaint, and why this action should not be dismissed without prejudice as to Williams, Burns and McGowan for lack of prosecution under Rule 4(m) of the Federal Rules of Civil Procedure. This matter is before the Court on plaintiff's Response To Court's Order To Show Cause (Doc. #26) filed November 30, 2021 and Plaintiff's Supplemental Response To Court's Order To Show Cause (Doc. #27) filed December 7, 2021.

As to Gregory C. Burns, plaintiff recently filed a certificate of service which states that he served Burns on July 22, 2021, some six days after plaintiff filed his complaint. Certificate Of Service (Doc. #25) filed November 29, 2021. The Court therefore declines to dismiss Burns.

As to Brad Williams, plaintiff states that he served defendant by certified mail on November 30, 2021. Plaintiff's Supplemental Response To Court's Order To Show Cause (Doc.

#27) at 2. While plaintiff purportedly served defendant beyond the 90-day deadline in Rule 4(m), the Court may extend the time for service, even absent a showing of good cause. Fed. R. Civ. P. 4(m); see Hardin v. Manitowoc-Forsythe Corp., 691 F.2d 449, 456 (10th Cir. 1982) (courts prefer to decide cases on merits rather than on technicalities). Plaintiff has not asked for an extension of the deadline to serve Williams. In addition, Williams has not had an opportunity to address whether service was proper or if he suffered any prejudice from the delay in service. Even so, based on plaintiff's showing, the Court declines to *sua sponte* dismiss Williams.

As to Amy A. McGowan, plaintiff does not dispute that he failed to serve her within 90 days of the filing of the complaint and he does not ask to extend the time to do so. Accordingly, under Rule 4(m), Fed. R. Civ. P., the Court dismisses without prejudice this action against Amy A. McGowan.

IT IS THEREFORE ORDERED that plaintiff has shown good cause why the Court should not *sua sponte* dismiss this action against Brad Williams and Gregory C. Burns. Plaintiff has failed to show good cause why the Court should not dismiss this action against Amy A. McGowan. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, the Court dismisses without prejudice this action against Amy A. McGowan.

Dated this 10th day of December, 2021 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge